

DRAFT

COST CAP POLICY

POLLUTION LEGAL LIABILITY SELECT

DECLARATIONS

THIS IS A CLAIMS-MADE AND REPORTED POLICY - PLEASE READ CAREFULLY

POLICY NUMBER: 2679197 PLS (1)

Item 1: NAMED INSURED: OZ ENTERTAINMENT COMPANY

**ADDRESS: 1184 W. Olympic Blvd., Suite 695
Los Angeles, CA 90064**

Item 2: POLICY PERIOD 3/31/99 through 3/31/29

12:01 A.M. Standard Time at the address of the Named Insured shown above.

Item 3A: Coverages and Coverage Section Limits and Deductibles Coverages A through J

This Policy includes only those Coverages as stated in Section I of the Policy for which deductibles and limits of liability appear below.

Coverage	Deductible Each Incident Named Insured	Deductible Each Incident Additional Insured	Each Incident Limit	Coverage Section Aggregate Limit
A				
B				
C				
D				
E				
F				
G				
H				
I				

Coverage	Business Interruption Deductible (Days)	Each Incident Limit	Coverage Section Aggregate Limit
J			

Item 3B: Coverages and Coverage Section Limits and Self-Insured Retentions, Coverage K

Coverage	Attachment Point (Self-Insured Retention)	Each Incident Limit	Coverage Section Aggregate Limit
K	\$37,000,000	\$100,000,000	\$100,000,000

Item 4: POLICY AGGREGATE LIMIT: \$100,000,000

Item 5A: COVERED LOCATIONS, Coverages A through J

Item 5B: COVERED LOCATIONS, Coverage K:

All Real Estate being remediated or to be remediated pursuant ~~subject~~ to the Consent Order dated _____ between Oz Entertainment Company and KDHE (Including the former Sunflower Army Ammunition Plant and All Related Properties being transferred to Oz Entertainment Company, its successors and assigns); provided, however, COVERED LOCATIONS do not include real estate being remediated subject to the Consent Order for which a CERCLA Covenant has been granted by the Government upon the date of the Government determination that such land(s) are deemed Covenant Land.

Item 6: POLICY PREMIUM: _____

Item 7A: RETROACTIVE DATE, Coverages C, F, G, H and I

None.

Item 7B: RETROACTIVE DATE, Coverage K

The Clean-Up Costs must commence on or after 3/31/99. The fact that Clean-Up Costs have been incurred for any Pollution Condition prior to the inception of this Policy will not prohibit payment of additional Clean-Up Costs for the same Pollution Condition hereunder, or the counting of such Clean-Up Costs toward the exhaustion of the Self-Insured Retention related to the Attachment Point for Cost Cap Coverage. This Policy provides full coverage for prior acts to the extent that they are insured hereunder.

Item 8: CO-INSURANCE PARTICIPATION PERCENTAGE, Coverage K

None

Item 9: CONTINUITY DATE: 3/31/99

Broker: AON Risk Services, Inc. of Southern California
Construction Services Division
707 Wilshire Blvd., Suite 6000
Los Angeles, CA 90017

AMERICAN INTERNATIONAL SPECIALTY LINES INSURANCE COMPANY

OZ ENTERTAINMENT COMPANY

POLLUTION LEGAL LIABILITY SELECTSM POLICY

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AMERICAN INTERNATIONAL SPECIALTY LINES INSURANCE COMPANY

A Capital Stock Company, herein called the Company)

c/o American International Surplus Lines Agency, Inc.

Harborside Financial Center

401 Plaza 3

Jersey City, NJ 07311

OZ ENTERTAINMENT COMPANY

POLLUTION LEGAL LIABILITY SELECTSM POLICY

THIS IS A CLAIMS MADE AND REPORTED POLICY. THIS POLICY HAS CERTAIN PROVISIONS AND REQUIREMENTS UNIQUE TO IT AND MAY BE DIFFERENT FROM OTHER POLICIES THE INSURED MAY HAVE PURCHASED. DEFINED TERMS APPEAR IN BOLD FACE TYPE.

NOTICE: THE DESCRIPTIONS IN ANY HEADINGS OR SUB-HEADINGS OF THIS POLICY ARE INSERTED SOLELY FOR CONVENIENCE AND DO NOT CONSTITUTE ANY PART OF THE TERMS OR CONDITIONS HEREOF. ALL REFERENCES TO COVERAGE PARTS IN THIS POLICY REFER ONLY TO THIS POLICY AND NOT TO ANY OTHER POLICY(IES) THAT MAY BE ISSUED TO THE SAME NAMED INSURED.

In consideration of the payment of the premium, in reliance upon the statements in the Declarations and the Application annexed hereto and made a part hereof, and pursuant to all of the terms of this Policy, the Company agrees with the **Named Insured** as follows:

I. INSURING AGREEMENTS

1. COVERAGES

This Policy covers all risks insured hereunder except those that are specifically excluded.

THE FOLLOWING COVERAGES ARE IN EFFECT ONLY IF SCHEDULED IN THE DECLARATIONS:

COVERAGE A - ON-SITE CLEAN-UP OF PRE-EXISTING CONDITIONS

1. To pay **Clean-Up Costs** on behalf of the **Insured**, on or under the **Insured Property**, if such **Clean-Up Costs** are sustained solely by reason of the discovery by an **Insured** during the **Policy Period** of **Pollution Conditions** on or under the **Insured Property** which commenced prior to the **Continuity Date**, provided:

- (a) The discovery of such **Pollution Conditions** is reported to the Company in writing during the **Policy Period** or within ninety (90) days thereafter by the **Insured** and in accordance with Section II of the Policy;

Discovery of such **Pollution Conditions** happens when any director or officer or any employee with management responsibility for environmental matters of the **Insured**, or in the case of a proprietorship or partnership, an owner or general partner, becomes aware of such **Pollution Conditions**;

- (b) Such **Pollution Conditions** have been reported to the appropriate governmental agency in compliance with applicable **Environmental Laws**, in effect as of the date of discovery.
- 2. To pay **Loss** on behalf of the **Insured** that the **Insured** is legally obligated to pay as a result of **Claims** first made against the **Insured** and reported to the Company, in writing, during the **Policy Period**, or during the **Extended Reporting Period** if applicable, for **Clean-Up Costs** on or under the **Insured Property** resulting from **Pollution Conditions** on or under the **Insured Property** which commenced prior to the **Continuity Date**.

COVERAGE B - ON-SITE CLEAN-UP OF NEW CONDITIONS

- 1. To pay **Clean-Up Costs** on behalf of the **Insured**, on or under the **Insured Property**, if such **Clean-Up Costs** are sustained solely by reason of the discovery by an **Insured** during the **Policy Period** of **Pollution Conditions** on or under the **Insured Property** which commenced on or after the **Continuity Date**, provided:
 - (a) The discovery of such **Pollution Conditions** is reported to the Company in writing during the **Policy Period** or within ninety (90) days thereafter by the **Insured** and in accordance with Section II of the Policy;

Discovery of such **Pollution Conditions** happens when any director or officer or any employee with management responsibility for environmental matters of the **Insured**, or in the case of a proprietorship or partnership, an owner or general partner, becomes aware of such **Pollution Conditions**;
 - (b) Such **Pollution Conditions** have been reported to the appropriate governmental agency in compliance with applicable **Environmental Laws**, in effect as of the date of discovery.
- 2. To pay **Loss** on behalf of the **Insured** that the **Insured** is legally obligated to pay as a result of **Claims** first made against the **Insured** and reported to the Company, in writing, during the **Policy Period**, or during the **Extended Reporting Period** if applicable, for **Clean-Up Costs** on or under the **Insured Property** resulting from **Pollution Conditions** on or under the **Insured Property** which commenced on or after the **Continuity Date**.

COVERAGE C - THIRD PARTY CLAIMS FOR ON-SITE BODILY INJURY AND PROPERTY DAMAGE

To pay **Loss** on behalf of the **Insured** that the **Insured** becomes legally obligated to pay as a result of **Claims** first made against the **Insured** and reported to the Company in writing during the **Policy Period**, or during the **Extended Reporting Period** if applicable, for **Bodily Injury**, or **Property Damage** to **Personal Property** of third-parties caused by **Pollution Conditions** on or under the **Insured Property**, if such **Bodily Injury** or **Property Damage** takes place while the person injured or **Personal Property** damaged is on the **Insured Property**.

COVERAGE D - THIRD PARTY CLAIMS FOR OFF-SITE CLEAN-UP RESULTING FROM PRE-EXISTING CONDITIONS

To pay **Loss** on behalf of the **Insured** that the **Insured** becomes legally obligated to pay as a result of **Claims** first made against the **Insured** and reported to the Company in writing during the **Policy Period**, or during the **Extended Reporting Period** if applicable, for **Clean-Up Costs** beyond the boundaries of the **Insured Property** resulting from **Pollution Conditions** which commenced prior to the **Continuity Date**.

COVERAGE E - THIRD PARTY CLAIMS FOR OFF-SITE CLEAN-UP RESULTING FROM NEW CONDITIONS

To pay **Loss** on behalf of the **Insured** that the **Insured** becomes legally obligated to pay as a result of **Claims** first made against the **Insured** and reported to the Company in writing during the **Policy Period**, or during the **Extended Reporting Period** if applicable, for **Clean-Up Costs** beyond the boundaries of the **Insured Property** resulting from **Pollution Conditions** which commenced on or after the **Continuity Date**.

COVERAGE F - THIRD PARTY CLAIMS FOR OFF-SITE BODILY INJURY AND PROPERTY DAMAGE

To pay **Loss** on behalf of the **Insured** that the **Insured** becomes legally obligated to pay as a result of **Claims** first made against the **Insured** and reported to the Company in writing during the **Policy Period**, or during the **Extended Reporting Period** if applicable, for **Bodily Injury** or **Property Damage** beyond the boundaries of the **Insured Property** that result from **Pollution Conditions** on or under the **Insured Property** which have migrated beyond the boundaries of the **Insured Property**.

COVERAGE G - THIRD-PARTY CLAIMS FOR ON-SITE CLEAN-UP COSTS - NON-OWNED LOCATIONS

To pay **Loss** on behalf of the **Insured** that the **Insured** becomes legally obligated to pay as a result of **Claims** first made against the **Insured** and reported to the Company in writing during the **Policy Period**, or during the **Extended Reporting Period** if applicable, for **Clean-Up Costs** on or under a **Non-Owned Location** resulting from **Pollution Conditions** on or under such **Non-Owned Location**.

COVERAGE H - THIRD PARTY CLAIMS FOR OFF-SITE BODILY INJURY, PROPERTY DAMAGE OR CLEAN-UP COSTS - NON-OWNED LOCATIONS

To pay **Loss** on behalf of the **Insured** that the **Insured** becomes legally obligated to pay as a result of **Claims** first made against the **Insured** and reported to the Company in writing during the **Policy Period**, or during the **Extended Reporting Period** if applicable, for **Bodily Injury**, **Property Damage** or **Clean-Up Costs** beyond the boundaries of a **Non-Owned Location** resulting from **Pollution Conditions** on or under such **Non-Owned Location**, which have migrated beyond the boundaries of such **Non-Owned Location**.

COVERAGE I - POLLUTION CONDITIONS RESULTING FROM TRANSPORTED CARGO

To pay **Loss** on behalf of the **Insured** that the **Insured** becomes legally obligated to pay as a result of **Claims** first made against the **Insured** and reported to the Company in writing during the **Policy Period**, or during the **Extended Reporting Period** if applicable, for **Bodily Injury**, **Property Damage** or **Clean-Up Costs** resulting from **Pollution Conditions** from **Transported Cargo**.

COVERAGE J - BUSINESS INTERRUPTION COVERAGE - ACTUAL LOSS OR RENTAL VALUE

To pay the **Insured's Actual Loss** or loss of **Rental Value**, and **Extra Expense** to the extent it reduces **Actual Loss** or loss of **Rental Value** otherwise payable under this coverage section, resulting from the necessary interruption of the **Insured's** business operations during the **Period of Restoration**. Such necessary interruption must be caused principally and directly by **Pollution Conditions** on or under the **Insured Property**. If the necessary interruption of the **Insured's** business operations is caused by such **Pollution Conditions** and any other cause, the Company shall pay only for that part of **Actual Loss** or **Rental Value** and **Extra Expense** resulting from such necessary interruption caused solely and directly by such **Pollution Conditions**.

Such **Pollution Conditions** must:

1. (a) commence prior to the **Continuity Date**, if the **Named Insured** has purchased Coverage A, under this Policy, or

- (b) commence on or after the **Continuity Date**, if the **Named Insured** has purchased Coverage B under this Policy; and
- 2. be first discovered by the **Insured** during the **Policy Period**; and
- 3. be reported to the Company, no later than thirty (30) days after discovery.

In determining **Actual Loss** or loss of **Rental Value**, the Report/Worksheet annexed to this Policy and made a part of it shall be utilized.

COVERAGE K - CLEAN-UP COST CAP - KNOWN AND UNKNOWN POLLUTANTS

To pay on behalf of the **Insured** for **Loss** which the **Insured** sustains for **Clean-Up Costs** on or after the **Inception Date** and for any **Clean-Up** which commences before the **Termination Date**:

- (a) At an **Insured Property** pursuant to the **Consent Order** or any revision of the **Consent Order** approved by any regulatory authority; or
- (b) At areas beyond the boundaries of the **Consent Order** if such **Clean-Up Costs** are incurred in the **Clean-Up of Pollutants** which were discovered through and originated from the performance of the **Consent Order** or any revision of the **Remedial Action Plan** approved by any regulatory authority.

This coverage applies only if the following conditions are satisfied:

- 1. The **Pollutants** are addressed in the **Consent Order** or originated from an **Insured Property**; and
- 2. The **Named Insured** reports the **Clean-Up Costs** to the Company prior to the **Termination Date**, in accordance with Section II.A. of the Policy; and
- 3. The **Named Insured** provides and contractually requires IT Corporation and its successors (if any) to provide the Company with progress reports, including work completed and costs incurred to date on at least a calendar quarter basis on the progress of the **Consent Order** and the **Clean-Up Costs** incurred under this Coverage K, however, the failure of the **Named Insured** to make the required reports shall only reduce the **Loss** payable by the Company to the extent that the delay or failure to report has increased the amount of **Loss**; and
- 4. Where **Clean-Up Costs** are reviewed by KDHE, such costs are "Qualified Expenses" as defined in the **Consent Order**.

2. LEGAL EXPENSE AND DEFENSE

The Company shall have the right and the duty to defend any **Claims** covered under Coverages A through I provided the **Named Insured** has purchased such Coverage. The Company's duty to defend or continue defending any such **Claim**, and to pay any **Loss**, shall cease once the applicable limit of liability, as described in Section V. (Limits of Coverage; Deductible) has been exhausted. Defense costs, charges and expenses are included in **Loss** and reduce the applicable limit of liability, as described in Section V., and are included within the Deductible amount for the Coverage Section which applies and is shown in Item 3 of the Declarations.

The **Insured** is entitled to select independent counsel to defend the **Insured** at the Company's expense. The attorney fees and all other litigation expenses the Company must pay to that counsel are limited to the rates the Company would actually pay to counsel that the Company retains in the ordinary course of business in the defense of similar **Claims** in the community where the **Claim** arose or is being defended.

Additionally, the Company may exercise the right to require that such counsel have certain minimum qualifications with respect to their competency, including experience in defending **Claims** similar to the one pending

against the **Insured**, and to require such counsel to have errors and omissions insurance coverage. As respects any such counsel, the **Insured** agrees that counsel will timely respond to the Company's request for information regarding the **Claim**. The **Insured** may at any time, by its signed consent, freely and fully waive its right to select independent counsel.

For Coverages C, D, E, F, G, H and I; if the **Insured** refuses to consent to any settlement within the limits of liability of this Policy recommended by the Company and acceptable to the claimant, the Company's duty to defend shall then cease and the **Insured** shall thereafter negotiate or defend such **Claim** independently of the Company, and the Company's liability shall not exceed the amount, less the **Deductible** or any outstanding deductible balance, for which the **Claim** could have been settled if such recommendation was consented to. If more than one **Insured** is named in a third-party **Claim**, the settlement (or refusal to accept a settlement offer as set forth above) shall not affect the rights of other **Insureds** under this Policy, unless and only to the extent that they have consented in writing to the other **Insured's** settlement or refusal to settle.

II. NOTICE REQUIREMENTS AND CLAIM PROVISIONS

It is a condition precedent to any rights afforded under this Policy that the **Insured** provide the Company with notice of **Pollution Conditions**, **Claims** and the discovery of **Pollutants** as follows:

A. NOTICE OF POLLUTION CONDITIONS, CLAIMS AND POLLUTANTS

1. In the event of **Pollution Conditions** under Coverages A through J, a **Claim** under Coverages A through I, or the discovery of **Pollutants** at or beyond the boundaries of an **Insured Property** under Coverages K, the **Insured** shall give written notice to:

Steven Lessick
Attorney at Law
American Int'l. Surplus Lines Agency, Inc.
Harborside Financial Center
401 Plaza 3
Jersey City, NJ 07311

or other address(es) as substituted by the Company in writing.

2. The **Insured** shall give notice of **Pollution Conditions** or the discovery of **Pollutants** as soon as practicable and such notice shall include to the extent that such information is reasonably known to the **Insured**, information sufficient to identify the **Named Insured**, the **Insured Property**, the names of persons with knowledge of the **Pollution Conditions** and all known and reasonably obtainable information regarding the time, place, cause, nature of and other circumstances of the **Pollution Conditions**. Written notice shall be made on a notice of loss form supplied by the Company.
3. The **Insured** shall give notice of **Claims** as soon as practicable, but in any event during the **Policy Period** or **Extended Reporting Period**, if applicable. The **Insured** shall furnish information at the request of the Company. When a **Claim** has been made, the **Insured** shall forward the following to the Company as soon as practicable:
 - a. All reasonably known information with respect to the time, place and circumstances thereof, and the names and addresses of the claimant(s) and available witnesses.
 - b. All demands, summonses, notices or other process or papers filed with a court of law, administrative agency or an investigative body;

- c. Other information in the possession of the **Insured** or its hired experts which the Company reasonably deems necessary.
4. If a **Claim** is presented to the **Insured**, and the **Insured** fails to notify the Company, any other **Insured** can report the **Claim** during the **Policy Period** or the **Extended Reporting Period** and the policy will respond as if the **Claim** were reported by the **Insured**. Furthermore, the failure of the **Named Insured** to report **Clean-up Costs** in accordance with the Policy provisions shall not preclude any other **Insured** from reporting such **Clean-Up Costs** to the Company at any time

B. NOTICE OF POSSIBLE CLAIM

1. If during the **Policy Period**, the **Insured** first becomes aware of **Pollution Conditions** which it reasonably expects may result in a **Claim** under one or more of Coverages C through I which the **Named Insured** has purchased, the **Insured** may provide written notice to the Company during the **Policy Period** containing all the information required under paragraph 2) below. Any **Claim** subsequently made against the **Insured** and reported to the Company within ten (10) years after the end of the **Policy Period** of this policy or any continuous, uninterrupted renewal thereof, shall be deemed to have been first made and reported during the **Policy Period** of this policy. Such **Claim** shall be subject to the terms, conditions and limits of coverage of this policy.
2. It is a condition precedent to the coverage afforded by this Clause that written notice of **Pollution Conditions** or a **Claim** under paragraph 1) above contain all of the following information: (a) the cause of the **Pollution Conditions**; (b) the **Insured Property** upon which the **Pollution Conditions** took place or from which the **Pollution Conditions** emanated; (c) the **Bodily Injury, Property Damage** or **Clean-Up Costs** which has resulted or may result from such **Pollution Conditions**; (d) the **Insured(s)** which may be subject to the **Claim** and any potential claimant(s); (e) all engineering information available on the **Pollution Conditions** and any other information that the Company deems reasonably necessary; and (f) the circumstances by which and the date the **Insured** first became aware of the potential **Claim**.

III. RIGHTS OF THE COMPANY AND DUTIES OF THE INSURED IN THE EVENT OF POLLUTION CONDITIONS AND IN CONNECTION WITH REMEDIAL ACTIVITIES

A. Pollution Conditions - Coverages A Through J

1. The Company's Rights
 - (a) The Company shall have the right to participate in the **Clean-Up** or mitigation of **Pollution Conditions** upon receiving notice as provided in Section II of this Policy, but, only if the **Insured** or its contractor has committed acts of gross malfeasance in the **Clean-Up** or mitigation of such **Pollution Conditions**.
 - (b) Allocation of Sums Expended. Any sums expended by the Company under Paragraph A.1.(a) of this Section III will be deemed incurred or expended by the **Insured** and shall be applied against the limits of coverage under this Policy.
2. The **Named Insured** shall have the duty to clean up **Pollution Conditions** to the extent required by **Environmental Laws** or KDHE, by retaining competent professional(s) or contractor(s) mutually acceptable to the Company and the **Named Insured**. Contractors approved in advance by the Company include those listed in Endorsement No. 8 to this

Policy. The Company shall have the right but not the duty to review and approve all aspects of any such **Clean-Up**. The **Named Insured** shall notify the Company of actions and measures taken pursuant to this paragraph.

B. Remedial Activities - Coverage K

1. The Company shall have the right, but not the duty, to review, assess and inspect all aspects of any **Clean-Up** to which Coverage K applies, regardless of whether the **Insured** has incurred **Clean-Up Costs** in excess of the **Self-Insured Retention**. Neither the Company's rights nor its exercise of the rights under this paragraph shall constitute an undertaking to determine or warrant that the **Clean-Up** is safe, healthful, or in conformity with applicable law.
2. The **Insured** shall: (a) take all reasonable and prudent steps to minimize the **Clean-Up Costs**; (b) limit access to the **Insured Property** and prevent the spread of further contamination; (c) retain competent professional(s) or contractor (s) acceptable to the Company and the **Insured** to undertake and complete **Clean-Up** and the Company's approval will not be unreasonably withheld; (d) keep detailed records of all **Clean-Up Costs**; and (e) to the extent of the **Insured's** legal right of access, permit the Company to inspect the **Insured Property**, as often as the Company chooses, after providing reasonable notice, and inspect all financial records, drawings, plans and specifications involved in the **Loss**.
3. The **Insured** shall cooperate with the Company by providing the Company with access to:
 - (a) All information developed or discovered by the **Insured** concerning the **Clean-Up**;
 - (b) Free access to interview any agent, servant or employee of the **Insured** or any contractor or subcontractor involved in the **Clean-Up**; and
 - (c) Any other information or other reasonable requests from the Company concerning the **Clean-Up**.

IV. EXCLUSIONS

1. COMMON EXCLUSIONS - APPLICABLE TO ALL COVERAGES

Unless otherwise provided in the Exclusions below, this Policy does not apply to **Clean-Up Costs, Claims, Loss, Actual Loss, Extra Expense**, or loss of **Rental Value**:

A. PUNITIVE DAMAGES; FINES/PENALTIES:

due to or for any punitive, exemplary or the multiplied portion of multiple damages, or any civil or administrative fines, penalties or assessments; or any criminal fines, penalties or assessments except to the extent that any of the foregoing result from delays or actions caused by the Company exercising any of its rights to approval or other rights under this Policy or applicable law.

B. CONTRACTUAL LIABILITY:

arising from liability of others assumed by the **Insured** under any contract or agreement, unless the liability of the **Insured** would have attached in the absence of such contract or

agreement or the contract or agreement is an **Insured Contract**, as defined in the Schedule of Insured Contracts Endorsement (Endorsement No. 2).

C. TRANSPORTATION:

except with respect to Coverage I, arising out of the ownership, maintenance, use, operation, loading or unloading of any conveyance beyond the boundaries of the **Insured Property**.

D. ABANDONED PROPERTY:

arising from **Pollution Conditions** on, under or originating from the **Insured Property** and which commence subsequent to the time the **Insured Property** is abandoned.

E. INTENTIONAL AND ILLEGAL ACTS:

arising from **Pollution Conditions** that result from an illegal act of a **Responsible Insured** if he or she knew or reasonably could have expected that **Pollution Conditions** would result.

This exclusion shall apply only to the **Insured** for whom the **Responsible Insured** whose illegal act results in **Pollution Conditions** works, and then only to the extent that the above-referenced act results in an increase in the amount of costs otherwise payable by the Company hereunder.

With respects to Coverage K, this exclusion does not apply to illegal acts prior to the **Inception Date** of this Policy that resulted in the necessity for the **Consent Order**.

F. NONCOMPLIANCE:

arising from **Pollution Conditions** based upon or attributable to Robert Kory's or the General Counsel of Oz Entertainment Company's intentional, willful or deliberate noncompliance with any statute, regulation, ordinance, administrative complaint, notice of violation, notice letter, executive order, or instruction of any governmental agency or body.

This exclusion shall apply only to Oz Entertainment Company, and then only to the extent that the above-referenced noncompliance results in an increase in the amount of costs otherwise payable by the Company hereunder.

With respect to Coverage K, this exclusion does not apply to noncompliance prior to the **Inception Date** of this Policy and/or that resulted in the necessity for the **Consent Order**.

G. INTERNAL EXPENSES:

for costs, charges or expenses incurred by the **Insured** for goods supplied or services performed by the staff or salaried employees of the **Insured**, or its parent, subsidiary or affiliate, except if in response to an emergency or pursuant to **Environmental Laws** which require immediate remediation of **Pollution Conditions**, or unless such costs, charges or expenses are incurred with the prior written approval of the Company in its sole discretion.

However, this exclusion does not apply to expenses that are incurred by the approved remediation contractor acting pursuant to the **Consent Order**.

H. INSURED VS. INSURED:

by any **Insured** against any other person or entity who is also an **Insured** under this Policy; however, this exclusion shall not apply to **Claims** between **Insureds** where the **Claim** is

initiated by third parties, **Claims** which arise out of an **Insured Contract**, or **Claims** which arise out of the **Consent Order**.

I. EMPLOYER LIABILITY:

arising from **Bodily Injury** to any past or present employee of an **Insured** or its parent, subsidiary or affiliate arising out of and in the course of employment by the **Insured** or its parent, subsidiary or affiliate.

J. PRIOR KNOWLEDGE/NON-DISCLOSURE:

arising from **Pollution Conditions** existing prior to the **Inception Date** of this Policy and not disclosed in the application for this Policy, if the **Responsible Insured** knew or reasonably expected that such **Pollution Conditions** could give rise to **Clean-Up Costs**, **Remediation Costs**, interruption of the **Named Insured's** business, or a **Claim** under this Policy.

This exclusion shall not apply to any **Pollution Conditions** that are described in the reports, records, files, drawings, data and tests made available to the Company prior to the inception of coverage under this Policy or to any **Insured** that did not employ the **Responsible Insured** that did not disclose the **Pollution Conditions** giving rise to **Clean-Up Costs**, **Remediation Costs**, interruption of the **Named Insured's** business or a **Claim** under this Policy.

K. CONSENT ORDER:

except with respect to Coverage K, for costs of performing a **Consent Order**, or arising from **Pollution Conditions** discovered in the course of performing a **Consent Order**.

2. COVERAGE I EXCLUSIONS

The following exclusions apply to Coverage I.

This Policy does not apply to **Claims** or **Loss**:

A. PROPERTY DAMAGE TO CONVEYANCES:

for **Property Damage** to any conveyance utilized during the **Transportation of Cargo**.

This exclusion does not apply to **Claims** made by third-party carriers of the **Insured** for such **Property Damage** alleging or arising from the **Insured's** negligence.

B. POLLUTION CONDITIONS PRIOR OR SUBSEQUENT TO TRANSPORTATION OF CARGO:

arising from a **Pollution Condition**:

- (1) which commences prior to the **Transportation of Cargo**; or
- (2) which commences after **Cargo** reaches its final destination, or while the **Cargo** is in storage off-loaded from the conveyance which was transporting it;

C. THIRD-PARTY CARRIER CLAIMS:

made by a third-party carrier, its agents or employees, for **Bodily Injury, Property Damage or Clean-Up Costs**, whether or not the **Bodily Injury, Property Damage or Clean-Up Costs** were directly incurred by such third-party carrier. This exclusion does not apply to **Claims** alleging or arising from the **Insured's** negligence.

3. COVERAGE K EXCLUSIONS

The following exclusions apply to Coverage K.

This Policy does not apply to **Clean-Up Costs**:

A. BODILY INJURY OR PROPERTY DAMAGE

arising from any **Bodily Injury** or **Property Damage**.

B. LIABILITY TO THIRD-PARTIES

arising from any liability to any third party for any reason whatsoever, other than **Clean-Up Costs** otherwise covered under this Policy.

C. DELAY, DEFAULT, SUSPENSION, DEFECTS

arising from:

1. Unreasonable time delay in a contractor's performance of **Clean-Up**, as defined by contract, if such delay is within the control of the contractor performing the **Clean-Up** provided, however, such exclusion shall not apply to delays due to regulatory action or inaction.
2. Solely from faulty workmanship or defective materials.

D. MODIFICATION OF CONSENT ORDER

arising from any modification of the **Consent Order** made by the **Named Insured**, unless:

1. Such modification is required by any governmental entity responsible for supervision of the **Clean-Up**; or
2. The Company has consented to such modification in advance, in writing; or
3. Any change in the **Consent Order** that does not increase **Clean-Up Costs**.

E. OTHER APPLICABLE COVERAGE(S)

covered under any of Coverages A through I, or which, but for the amount thereof, would be covered under any of such Coverages.

V. LIMITS OF COVERAGE; DEDUCTIBLE

Regardless of the number of **Claims**, claimants, **Pollution Conditions**, **Insureds** or **Insured Property** under this Policy, the following limits of liability apply:

A. Policy Aggregate Limit

The Company's total liability for all **Clean-Up Costs** and **Loss**, under Coverages A through I and Coverage K, and all **Actual Loss**, loss of **Rental Value** and **Extra Expense** under Coverage J, shall not exceed the "Policy Aggregate" stated in Item 4 of the Declarations.

B. Each Incident Limit - Coverages A Through I

- (1) Subject to Paragraph V.A. above, the most the Company will pay for all **Loss** under each Coverage in Coverages A through I arising from the same, related or continuous **Pollution Conditions** is the "Each Incident" limit of coverage for that particular coverage stated in Item 3 of the Declarations.
- (2) If the **Insured** first discovers **Pollution Conditions** during the **Policy Period** and reports them to the Company in accordance with Section II., all continuous or related **Pollution Conditions** first discovered by the **Named Insured** and reported to the Company under a subsequent Pollution Legal Liability Policy issued by the Company or its affiliate providing substantially the same coverage as this Policy shall be deemed to have been first discovered and reported during the **Policy Period**.
- (3) If a **Claim** for **Bodily Injury, Property Damage**, or **Clean-Up Costs** is first made against the **Insured** and reported to the Company during the **Policy Period**, all **Claims** for **Bodily Injury, Property Damage** or **Clean-Up Costs**, arising from the same, continuous or related **Pollution Conditions** which are first made against the **Insured** and reported under a subsequent Pollution Legal Liability Policy issued by the Company or its affiliate providing substantially the same coverage as this Policy, shall be deemed to have been first made and reported during this **Policy Period**. Coverage under this Policy for such **Claims** shall not apply, however, unless at the time such **Claims** are first made and reported, the **Insured** has maintained with the Company or its affiliate Pollution Legal Liability coverage substantially the same as this coverage on a continuous, uninterrupted basis since the first such **Claim** was made against the **Insured** and reported to the Company.

C. Coverage Section Aggregate Limit

Subject to Paragraph V.A. above, the Company's total liability for all **Clean-Up Costs** under Coverages A and B, and for all **Loss** under each Coverage in Coverages A through I, shall not exceed the "Coverage Section Aggregate" limit of coverage for that particular coverage stated in Item 3 of the Declarations.

D. Maximum for Clean-Up Cost Cap

- (1) Subject to Paragraph V.A. above, the maximum amount for which the Company is liable for all **Loss** under Coverage K is the Limit of Liability stated in Item 3 of the Declarations,

regardless of whether or not the **Insured** is financially unable, or is unwilling to pay its **Self-Insured Retention**. The **Self-Insured Retention** is to be borne by the **Insured** and is not to be insured.

- (2) Subject to and as part of the Company's limit of liability under Coverage K described in paragraph V.D.(1) above, the most the Company will pay for costs, charges or expenses expended for the preparation of a remedial action plan, if any, under Coverage K, shall not exceed 10% of the Company's total liability under Coverage K.

E. Maximum for All Business Interruption

Subject to Paragraph V.A. above, the maximum amount for which the Company is liable for all **Actual Loss** or loss of **Rental Value**, and **Extra Expense** under Coverage J is the lesser of:

- (1) the **Actual Loss** and **Extra Expense**, or loss of **Rental Value** and **Extra Expense**, whichever is applicable, incurred during the number of days of interruption of business stated in Item 3 of the Declarations, and
- (2) the amount stated in Item 3 of the Declarations.

F. Multiple Coverages

Subject to Paragraph V.A. above, if the same, related or continuous **Pollution Conditions** result in coverage under more than one Coverage under Coverages A through J, every applicable "Each Incident," "Coverage Section Aggregate," and "Maximum for All Business Interruption" limit of coverage among such coverage sections shall apply to the **Clean-Up Costs, Loss, Actual Loss** and **Extra Expense**, or loss of **Rental Value** and **Extra Expense**, whichever is applicable, resulting from such **Pollution Conditions**.

G. Deductible/Self-Insured Retention

(1) Coverages A through I

Subject to Paragraphs V.A. through V.F. above, this Policy is to pay covered **Clean-Up Costs**, or **Loss**, as the case may be, in excess of the Deductible amount stated in Item 3 of the Declarations for that particular coverage, up to but not exceeding the applicable "Each Incident" limit of coverage. The Deductible amount applies to all **Clean-Up Costs** or **Loss** arising from the same, related or continuous **Pollution Conditions**.

If the same, related or continuous **Pollution Conditions** result in coverage under more than one coverage section in Coverages A through I, only one deductible (e.g., the highest deductible amount stated in Item 3 of the Declarations among all the coverage sections applicable to the **Claim**) will apply.

The first named **Insured** shall promptly reimburse the Company for advancing any element of **Clean-Up Costs** or **Loss** falling within the Deductible. Additional **Insureds**, specifically ~~the~~ KDHE, KDFA and Public Benefit Transferees, are not responsible to participate in any deductible reimbursement for Coverages A through L.

(2) Coverage J

Subject to Paragraphs V.A. through V.F. above, this Policy is to pay the **Actual Loss** or loss of **Rental Value**, and **Extra Expense** under Coverage J in excess of the **Actual Loss** or loss of **Rental Value**, and **Extra Expense** sustained during the first seven (7) days of the necessary interruption of the **Insured's** business operations during the **Period of Restoration**. The Deductible

amount applies to all **Actual Loss**, or loss of **Rental Value**, and **Extra Expense** arising from the same, related or continuous **Pollution Conditions**.

(3) Coverage K

Subject to Paragraphs V.A. through V.F. above, this Policy is to pay **Clean-Up Costs** under Coverage K in excess of the attachment point of \$37,000,000 in Item 3B of the Declarations.

VI. DEFINITIONS

A. **Actual Loss** means the:

- (1) Net Income (Net Profit or Loss before income taxes) the Insured would have earned or incurred had there been no interruption of business operations; and
- (2) Continuing normal operating expenses incurred, including **Ordinary Payroll Expense**.

B. **Bodily Injury** means physical injury, or sickness, disease, mental anguish or emotional distress, sustained by any person, including death resulting therefrom.

C. **Cargo** means goods, products or wastes transported for delivery by a carrier properly licensed to transport such goods, products or wastes.

D. **Claim** means a written demand received by the **Insured** seeking a remedy and alleging liability or responsibility on the part of the **Insured** for **Loss** under Coverages A through I.

E. **Clean-Up**, as used in Coverage K, means the removal, disposal, treatment (including in-situ treatment) or neutralization of **Pollutants**, operations and maintenance (O&M) and any monitoring activities required under the **Consent Order** during or after the completion of such removal, disposal, treatment or neutralization and required by a government agency prior to the **Termination Date** of this Policy.

F. **Clean-Up Costs** means:

(1) "Qualified Expenses" as defined in the **Consent Order**, dated _____ between KDHE and OEC (costs and expenses incurred by OEC directly arising from carrying out the remediation activities under the Classification Agreement, dated _____ between KDHE and OEC concerning identification of Tracts appropriate for transfer with a Covenant Deed or appropriate to transfer with a Deferred Covenant Deed, and OEC's Remediation responsibilities in the **Consent Order**).

(2) **Clean-Up Costs** also include expenses associated with:

- (a) investigation, assessment and testing of any new **Pollutants** or additional quantities or levels of known **Pollutants** which may be discovered during implementation of a **Clean-Up**; or
- (b) negotiations of scientific conditions concerning the environmental remediation of the **Insured Property** with regulatory agency(ies) responsible for oversight of the **Clean-Up** during implementation of the **Consent Order**, including negotiation for closure of the **Clean-Up** with the Company's prior written approval; or

- (c) additional characterization costs and expenses under a Consent Order; or
- (d) Any other cost as incurred pursuant to the **Consent Order**.

Clean-Up Costs does not include:

- (a) costs, charges or expenses incurred for litigation, arbitration or other form of dispute resolution in any way related to or in connection with Clean-Up, including fees of attorneys, consultants, investigators, adjusters and experts, unless otherwise expressly consented to in writing and in advance by the Company.
- G. **Co-Insurance Participation** means the percentage of **Clean-Up Costs** the **Insured** must bear in excess of the **Self-Insured Retention**, as shown in Item 8 of the Declarations.
- H. **Consent Order** means the Consent Order dated _____, including any remedial action plans and work plans developed pursuant thereto and approved by KDHE, and all supporting documentation thereto which, upon their respective preparation, shall be deemed to be attached to and forming part of the Policy which describes or will describe the **Clean-Up** to be undertaken at the **Insured Property**, and the extent described therein, at areas beyond the boundaries of the **Insured Property**. However, the **Consent Order** will not include any **Clean-Up of Pollution Conditions** upon land(s) conveyed to Oz Entertainment Company upon the date of the Government determination that such land(s) are deemed Covenant Land regardless of whether that **Clean-Up** is conducted pursuant to the **Consent Order**.
- I. **Continuity Date** means the date stated in Item 9 of the Declarations.
- J. **Environmental Laws** means any applicable federal, state, provincial or local law pursuant to which the **Insured** has or may have a legal obligation to incur **Clean-Up Costs**. State laws include State Risk-Based Standards.
- K. **Extended Reporting Period** means either the automatic additional period of time or the optional additional period of time, whichever is applicable, in which to report **Claims** following termination of coverage, as described in Section VIII. of this Policy.
- L. **Extra Expense** means necessary expenses the **Insured** incurs during the **Period of Restoration**:
- (1) That would not have been incurred if there had not been an interruption of the **Insured's** business operations by covered **Pollution Conditions**; and
 - (2) Which avoid or minimize the interruption of the **Insured's** business operations,
- but only to the extent such expenses reduce **Actual Loss** or loss of **Rental Value**, whichever is applicable, otherwise covered under this Policy.
- Any salvage value of property obtained for temporary use during the **Period of Restoration** (other than the salvageable property subject to the Property Disposition Contract dated _____ by and between the **Named Insured** and IT Corporation), which remains after the resumption of normal operations, shall be taken into consideration in the adjustment of any loss under **Extra Expense** coverage.
- M. **Inception Date** means the beginning date of the period set forth in Item 2 of the Declarations.
- N. **Insured** means the **Named Insured**, and any past or present director, officer, shareholder, partner or employee thereof, including a temporary or leased employee, while acting within the scope of his or

her duties as such. **Insured** also means all Additional **Insureds** named in Endorsement No. 1 hereto, and any past or present director, officer, shareholder, partner or employee thereof, including a temporary or leased employee, while acting within the scope of his or her duties as such.

- O. **Insured Contract** means a contract or agreement entered into by the **Insured** in support of the Oz Project including without limitation, those **Insured Contracts** listed on the Schedule of Insured Contracts (See Endorsement No.2).
- P. **Insured Property** means with respect to Coverages A through J, each of the locations identified in Item 5(a) of the Declarations, and, with respect to Coverage K, each of the locations identified in Item 5(b) of the Declarations. The Deferred Covenant Land, as determined by the Army or GSA within the Former Sunflower Army Ammunition Plant (SAAP) will automatically be considered **Insured Property**.
- Q. **Loss** means, under the applicable Coverages: (1) monetary awards or settlements of compensatory damages for **Bodily Injury** or **Property Damage**; (2) where applicable, costs, charges and expenses incurred in the defense, investigation or adjustment of **Claims** for such compensatory damages or for **Clean-Up Costs**; (3) **Clean-Up Costs**; or (4) all costs incurred in the performance of the **Consent Order**.
- R. **Named Insured** means the person or entity named in Item 1 of the Declarations and including any subsidiary or affiliate of any **Named Insured** that at any time has rights to acquire or takes title to any portion of the **Insured Property**, and the Irrevocable Trust created by the Irrevocable Trust Agreement, dated _____, between Oz Entertainment Company and _____, but only upon the occurrence of a "Triggering Event" as defined in the aforesaid Trust Agreement (or a "Trigger Event" as defined in the **Consent Order**).
- S. **Non-Owned Location** means a site that is neither owned nor operated by the **Named Insured**, and which is identified in a Non-Owned Covered Locations Schedule attached to and made a part of this Policy by endorsement.
- T. **Ordinary Payroll Expense** means the entire payroll expense for all employees of the **Insured**, except officers, executives, department managers and employees under contract.
- U. **Personal Property** means any property other than real property and whatever is erected or growing upon or affixed to real property.
- V. **Policy Period** means the period set forth in Item 2 of the Declarations, or any shorter period arising as a result of:
- (1) cancellation of this Policy; or
 - (2) with respect to particular **Insured Property** or **Non-Owned Locations** designated in the Declarations, the deletion of such location(s) from this Policy by the Company. Deletion of any **Insured Property** or **Non-Owned Locations** shall be by mutual written consent of the Company, the **Named Insured**, and all entities that are Additional **Insureds** on this Policy.
- W. **Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapors, soot, fumes, acids, alkalis or toxic chemicals, and includes waste, and any other substance that is defined as a "Pollutant " or "Pollutant Condition" in the Consent Order between KDHE and the Oz Entertainment Company or any addenda thereto.
- X. **Pollution Conditions** means the discharge, dispersal, release, escape or migration of any **Pollutants** into or upon land, the atmosphere or any watercourse or body of water, including groundwater, provided such conditions are not naturally present in the environment, provided, however, the

Company shall be required to establish by clear and convincing evidence that any condition is naturally present in the environment.

Y. **Property Damage** means:

- (1) Physical injury to or destruction of tangible property of parties other than the **Insured**, including the resulting loss of use or value thereof; and
- (2) Loss of use, but not loss of value, of tangible property of parties other than the **Insured** which has not been physically injured or destroyed.

It is hereby agreed that as respects Coverage I, THIRD-PARTY CLAIMS FOR OFF-SITE PROPERTY DAMAGE, in the event that **Claims** for diminution in value are made against the **Insured**, coverage for such **Claims** will be provided, subject to all of the terms and conditions of the Policy, if and only if such **Claims** arise out of actual off-site **Pollution Conditions** and such actual off-site **Pollution Conditions** cause actual physical injury to or destruction of the claimant's tangible property. Coverage will not be provided under this Policy for **Claims** for diminution in value where off-site **Pollution Conditions** threaten, imminently endanger or speculatively result in alleged injury to the claimant's tangible property.

Property Damage does not include **Clean-Up Costs**.

Z. **Rental Value** means the:

- (1) Total anticipated rental income from tenant occupancy of the **Insured Property** as furnished and equipped by the **Insured**;
- (2) Amount of all charges which are the legal obligation of the tenant(s) and which would otherwise be the **Insured's** obligations; and
- (3) Fair rental value of any portion of the described premises which is occupied by the **Insured**,

less any rental income the **Insured** could earn by complete or partial rental of the **Insured Property**, or any reduction in loss by making use of other property on the **Insured Property** or elsewhere.

AA. **Responsible Insured** means Robert Kory or the General Counsel of OEC.

BB. **Self-Insured Retention** means the amount of **Clean-Up Costs** stated in Item 3 of the Declarations.

CC. As used in Coverage K, **Termination Date** means the earliest of the following:

1. The ending date of the period set forth in Item 2 of the Declarations;
2. The date on which the Limit of Liability shown in Item 3 of the Declarations for Coverage K is exhausted; or
3. With respect to Coverage K only, when the **Insured** receives written approval from the governmental entity responsible for supervision of the **Clean-Up** that **Clean-Up**, including all operations and maintenance and post **Clean-Up** monitoring has been completed at the **Insured Property** in accordance with the **Consent Order**.

The **Termination Date** shall not be extended by the exercise of any rights held by a governmental entity to reopen, reconsider, or otherwise cause the **Insured** to perform **Clean-Up Action** after previously having approved or acknowledged that **Clean-Up**, including all

operations and maintenance and post-**Clean-Up** monitoring has been completed at the **Insured Property** in accordance with the **Consent Order**.

DD. **Transportation** means the movement of **Cargo** by a conveyance, from the place where it is accepted by a carrier until it is moved:

- (1) to the place where the carrier finally delivers it; or
- (2) in the case of **Waste**, to a waste disposal facility to which the carrier delivers it.

Transportation includes the carrier's loading or unloading of **Cargo** onto or from a conveyance.

EE. **Transported Cargo** means **Cargo** after it is moved from the place where it is accepted by the **Carrier** for movement into or onto a conveyance, until the **Cargo** is moved from the conveyance to the place where it is finally delivered. **Transported Cargo** also includes **Cargo** during the loading or unloading onto or from a conveyance, provided that the loading or unloading is performed by or on behalf of the **Named Insured**.

VII. CONDITIONS

A. **Assignment** - This Policy may not be assigned to any entity, other than OEC-related entities or any entity that takes title to the **Insured Property**, without the prior written consent of the Company, such consent shall not be unreasonably withheld. Assignment of interest under this Policy other than those set forth above shall not bind the Company until its consent is endorsed thereon.

B. **Subrogation** - In the event of any payment under this Policy, the Company shall be subrogated to all the **Insured's** rights of recovery therefor against any person or organization except where such rights are required to be waived by contract and the waiver occurs prior to the **Loss**. The **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights including without limitation, assignment of the **Insured's** rights against any person or organization who caused **Pollution Conditions** or a Pollution Release on account of which the Company made any payment under this Policy. The **Insured** shall do nothing after the **Loss** to prejudice the Company's rights under this paragraph. Any recovery as a result of subrogation proceedings arising out of the payment of **Clean-Up Costs** or **Loss** covered under this Policy shall accrue first to the **Insured** to the extent of any payments in excess of the limit of coverage; then to the Company to the extent of its payments under the Policy; and then to the **Insured** to the extent of its deductible. Expenses incurred in such subrogation proceedings shall be apportioned among the interested parties in the recovery in the proportion that each interested party's share in the recovery bears to the total recovery.

The Company agrees that it shall not be subrogated to the **Insured's** rights of recovery against the United States Army, the United States Government, ~~or~~ the General Services Administration, KDHE, KDFA, or any other **Insured** under the Policy.

The Company will not seek recovery from any **Insured** of monies paid under this Policy.

C. **Cooperation** - The **Insured** shall cooperate with the Company and offer all reasonable assistance in the investigation and defense of **Claims** under the applicable Coverages purchased. The Company may require that the **Insured** submit to examination under oath, and attend hearings, depositions and trials. In the course of investigation or defense, the Company may require written statements or the **Insured's** attendance at meetings with the Company. The **Insured** must assist the Company in effecting settlement, securing and providing evidence and obtaining the attendance of witnesses.

- D. **Changes** - Notices to any agent or knowledge possessed by any agent or any other person shall not effect a waiver or a change in any part of this Policy or estop the Company from asserting any rights under the terms of this Policy; nor shall the terms of this Policy be waived or changed except by endorsement issued to form a part of this Policy executed by all **Insureds**.
- E. **Sole Agent** - The Named Insured first listed in Item 1 of the Declarations shall act on behalf of all other **Insureds**, if any, for the payment or return of premium, receipt and acceptance of any endorsement issued to form a part of this Policy, giving and receiving notice of cancellation or nonrenewal, and the exercise of the rights provided in the **Extended Reporting Period** clause.

OEC reserves the right to designate another party as its **Sole Agent** by providing written notice of its designation to the Company.

In the event that OEC, its successors in interest or designated **Sole Agent** are not available to accept a return premium, endorsement or notice of cancellation or nonrenewal, or fail to exercise the rights provided in the **Extended Reporting Period** clause, KDHE may accept a return premium, endorsement or notice of cancellation, or exercise the rights provided in the **Extended Reporting Period** clause under this Policy.

Voluntary Payments - No **Insured** shall voluntarily enter into any settlement, or make any payment or assume any obligation unless in response to an emergency or pursuant to state law which requires immediate remediation of **Pollution Conditions**, without the Company's consent which shall not be unreasonably withheld, except at the **Insured's** own cost.

Concealment of Fraud - This entire Policy shall be void, if whether before or after **Clean-Up Costs** are incurred or a **Claim** is first made, the **Named Insured** has willfully concealed or misrepresented any fact or circumstance material to the granting of coverage under this Policy, the description of the **Insured Property**, or the interest of the **Insured** therein.

However, the representations of one **Insured** shall not be imputed to any other **Insured** and shall not offset coverage for the innocent **Insured**.

- H. **Cancellation** - No **Insured** may cancel the Policy without the written consent of all **Insureds**. This Policy may be canceled by the Company only for the reasons stated below by mailing to all **Insureds** at the address shown in the Policy, written notice stating when not less than 60 days (10 days for nonpayment of premium) thereafter such cancellation shall be effective. Proof of mailing of such notice shall be sufficient proof of notice. Any **Insured** may reinstate this Policy including any **Extended Reporting Period**, provided within sixty (60) days of such cancellation, such **Insured** pays the amount of the premium stated in the Company's notice.

1. Willful concealment or misrepresentation of any fact or circumstance material to the granting of coverage under this Policy, the description of the **Insured Property**, or the interest of the **Insured** therein, as set forth in Paragraph G above;
2. Failure to pay any premium when due;

The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice either by the **Named Insured** or by the Company shall be equivalent to mailing. If the **Named Insured** cancels, the premium is fully earned at the inception date. If the Company cancels, earned premium shall be computed pro rata. Premium adjustment may be either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

- I. **Other Insurance or Funding Mechanism** - Where other insurance or funding mechanisms may be available for the **Clean-Up Costs** or **Loss** covered under this Policy, the Company's obligation to the **Insured** shall be primary except with respect to **Claims** arising out of **Bodily Injury** to an employee of an **Insured**, in which case this Policy will be excess of any other valid and collectible insurance.

Irrespective of other parties responsibility for **Clean-Up**, it is expressly understood and agreed that this Policy will address **Pollution Conditions** if the U.S. Government is responsible for the **Clean-Up**, pursuant to the Army-OEC Agreement or GSA-KSPDC Agreement as listed in Endorsement No. 2.

- J. **Right of Access and Inspection** - upon a 48-hour notification, any of the Company's authorized representatives shall have the right and opportunity but not the obligation when the Company so desires to interview persons employed by the Insured and to inspect at any reasonable time, during the **Policy Period** or thereafter, the **Insured Property** and all improvements, structures, products, ways, works, machinery and appliances thereon; but neither the Company nor its representatives shall assume any responsibility or duty to the **Insured** or to any other party, person or entity, by reason of such right or inspection. Neither the Company's right to make inspections, sample and monitor, nor the actual undertaking thereof nor any report thereon shall constitute an undertaking on behalf of the **Insured** or others, to determine or warrant that property or operations are safe, healthful or conform to acceptable engineering practices or are in compliance with any law, rule or regulation. The **Named Insured** agrees to provide appropriate personnel to assist the Company's representatives during any inspection.
- K. **Access to Information** - The **Named Insured** agrees to provide to the Company any information developed or discovered by the Insured concerning **Clean-Up Costs** for **Pollution Conditions** covered under this Policy, whether or not deemed by the **Insured** to be relevant to **such Clean-Up Costs** and to provide the Company free access to interview any **Insured** and review any documents of the **Insured**.
- L. **Representations** - By acceptance of this Policy, the **Named Insured** agrees that the statements in the Declarations, the Application and the Report/Worksheet (including the Schedule of Engineering Reports) are their agreements and representations, that this Policy is issued in reliance upon the truth of such representations and that this Policy embodies all agreements existing between the **Named Insured** and the Company or any of its agents relating to this insurance. However, the representations of one **Insured** shall not be imputed to any other **Insured** and shall not offset coverage for the innocent **Insured**. and, the reports listed on the Schedule of Engineering Reports are accepted by the Company as the **Named Insured's** complete and full representation as to the environmental condition of the site despite any other information that may exist that is not identified in the schedule. The **Named Insured** further represents and warrant that they know of no information that is materially different than that which is identified on the schedule.
- M. **Action Against Company** - No action shall lie against the Company, except in the case of an action to compel defense, a breach of contract action, a declaratory judgment action, or a bad faith until the amount of the **Insured's** obligation to pay shall have been finally determined either by judgment against the **Insured** after actual trial or by written agreement of the **Insured**, the claimant and the Company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Policy to the extent of the insurance afforded by the Policy. No person or organization shall have any right under this Policy to join the Company as a party to any action against the **Insured** to determine the **Insured's** liability, nor shall the Company be impleaded by the **Insured** or his legal representative. Bankruptcy or insolvency of the **Insured** or of the **Insured's** estate shall not relieve the Company of any of its obligations hereunder.

- N. **Service Of Suit** - It is agreed that in the event of failure of the Company to pay any amount claimed to be due hereunder, the Company, at the request of the **Insured**, will submit to the jurisdiction of a court of competent jurisdiction within the United States.. Nothing in this condition constitutes or should be understood to constitute a waiver of the Company's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. It is further agreed that service of process in such suit may be made upon Counsel, Legal Department, American International Specialty Lines Insurance Company, c/o American International Surplus Lines Agency, Inc., Harborside Financial Center, 401 Plaza 3, Jersey City, NJ 07311, or his or her representative, and that in any suit instituted against the Company upon this contract, the Company will abide by the final decision of such court or of any appellate court in the event of any appeal.

Further, pursuant to any statute of any state, territory, or district of the United States which makes provision therefor, the Company hereby designates the Superintendent, Commissioner, Director of Insurance, or other officer specified for that purpose in the statute, or his or her successor or successors in office as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the **Insured** or any beneficiary hereunder arising out of this contract of insurance, and hereby designates the above named Counsel as the person to whom the said officer is authorized to mail such process or a true copy thereof.

- O. **Financial Assurance** - Coverage I of this Policy shall not be utilized to evidence financial responsibility of any **Insured** under any federal, state, provincial or local law.
- P. **Resumption of Business** - Under Coverage J, the **Insured** shall, as soon as practicable, resume normal operation of the business and dispense with **Extra Expense**.
- Q. **Reduction of Loss** - Under Coverage J, if the **Insured** could reduce the **Actual Loss** or loss of **Rental Value**, or **Extra Expense** resulting from the interruption of business:

1. by complete or partial resumption of operations; or
2. by making use of other property at the **Insured Property**, or elsewhere,

such reductions shall be taken into account in arriving at **Actual Loss** or loss of **Rental Value** or **Extra Expense** under such Coverage J.

- R. **Sale or Transfer of Insured Property** - Under Coverage K, in the event that all, or a portion of the **Insured Property**, interest in the **Insured Property**, interest in any **Named Insured** is sold, or if ownership or operational control of the **Insured Property** is transferred by the **Named Insured** prior to the completion of the **Clean-Up** to which this Policy applies, this Policy shall remain in full force and effect without additional premium, subject to its terms and conditions, only if:
1. The new owner or operator of the **Insured Property** fully complies with all of the terms, conditions, duties and obligations of the **Named Insured** which are set forth in this Policy.

VIII. EXTENDED REPORTING PERIOD FOR CLAIMS - COVERAGES A THROUGH I

The **Named Insured** shall be entitled to an Automatic **Extended Reporting Period**, and (with certain exceptions as described in paragraph B. of this Section) be entitled to purchase an Optional **Extended Reporting Period** Endorsement collectively for Coverages A through I, upon termination of coverage as defined in Paragraph B.(3) of this Section. Neither the Automatic nor the Optional **Extended Reporting Period** shall reinstate or increase any of the limits of liability of this Policy.

A. Automatic Extended Reporting Period

Provided that the **Named Insured** has not purchased any other insurance to replace this insurance and which applies to a **Claim** otherwise covered hereunder, the **Named Insured** shall have the right to the following: a period of ten (10) years following the effective date of such termination of coverage in which to provide written notice to the Company of **Claims** first made and reported within the Automatic **Extended Reporting Period**.

A **Claim** first made and reported within the Automatic **Extended Reporting Period** will be deemed to have been made on the last day of the **Policy Period**, provided that the **Claim** arises from **Pollution Conditions** that commenced before the end of the **Policy Period** and is otherwise covered by this Policy. No part of the Automatic **Extended Reporting Period** shall apply if the **Optional Extended Reporting Period** is purchased.

IN WITNESS WHEREOF, the Company has caused this Policy to be signed by its president and secretary and signed on the Declarations page by a duly authorized representative or countersigned in states where applicable.

Secretary

President

ENDORSEMENT NO. 1

ADDITIONAL INSURED(S) ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

It is hereby agreed that the following entities are included as additional insureds. Coverage for such additional insureds applies under this Endorsement:

1. to the Additional Insureds' liability arising out of the **Named Insured's** ownership, operation, maintenance or use of the **Insured Property** and to the Additional Insureds' liability arising out of its own ownership, operation, maintenance or use of or activities on, about or related to the **Insured Property**.

ADDITIONAL INSUREDS

IT Corporation

United States Army

General Services Administration

United States of America

Public Benefit Transferees

Remediation Contractors Named in the Approved Contractors Endorsement (as their interests may appear)

Successors in Interest to the Named Insured and Subsequent Transferees (as their interests may appear)

Kansas Department of Health and Environment (KDHE)

Kansas Development Finance Authority (KDFA)

Kansas Statewide Projects Development Corporation (KSPDC)

The State of Kansas

Johnson County

Irrevocable Trust Created by the Irrevocable Trust Agreement, Dated _____

All other terms, conditions and exclusions remain the same.

ENDORSEMENT NO. 2

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

AGGREGATE DEDUCTIBLE ENDORSEMENT EACH AND EVERY MAINTENANCE DEDUCTIBLE

1. It is hereby agreed that the following is added to the Declarations, Item 3:

<u>Coverage</u>	<u>Aggregate Deductible</u>	<u>Each and Every Maintenance Deductible</u>
Pollution Legal Liability	\$1,000,000	\$125,000

2. Section V. LIMITS OF COVERAGE; DEDUCTIBLE, Paragraph F. Deductible, (1) Coverages A through J, is deleted in its entirety and replaced with the following:

F. Deductible

(1) Coverages A through J

Subject to Paragraphs V.A. through V.E. above, this Policy is to pay covered **Clean-Up costs** or **Loss**, as the case may be, in excess of the deductible amount stated in Item 3 of the Declarations for that particular coverage, up to but not exceeding the applicable "Each Incident" limit of coverage. Once the **Named Insured** pays the deductible amounts which in the aggregate equal the amount shown in the Declarations, Item 3, "Aggregate Deductible", the Deductible Each Incident will no longer apply but will be subject to an Each and Every Maintenance Deductible as shown above. The deductible amount applies to all **Clean-Up Costs** or **Loss** arising from the same, related or continuous **Pollution Conditions**.

If the same, related or continuous **Pollution Conditions** result in coverage under more than one coverage section in Coverage A through J, the highest applicable deductible under such coverages shall apply.

The **Insured** shall promptly reimburse the Company for advancing any element of **Clean-Up Costs** or **Loss** falling within the deductible.

All other terms, conditions and exclusions remain the same.

ENDORSEMENT NO. 3

CONTRACT DAMAGES

It is hereby agreed that the following is added to Section I, Insuring Agreements:

The Company agrees to pay **Contract Damages** on behalf of the **Insured** which the **Insured** becomes legally obligated to pay as a result of **Claims** first made against the **Insured** and reported to the Company in writing during the **Policy Period**, or during the **Extended Reporting Period**, if applicable.

It is further agreed that the following definition is added to Section VI, DEFINITIONS:

Contract Damages means compensatory damages arising from the **Insured's** breach of a written contract with a third party, if such breach is the direct result of **Pollution Conditions**.

All other terms, conditions and exclusions remain the same.

ENDORSEMENT NO. 4

SCHEDULE OF INSURED CONTRACTS

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

It is hereby agreed that the following are scheduled as **Insured Contracts** to this Policy:

INSURED CONTRACTS

1. Remediation Service Contract dated _____ by and between the **Named Insured** and IT Corporation
2. Master Services Contract dated _____ by and between the **Named Insured** and IT Corporation
3. Property Disposition Contract dated _____ by and between the **Named Insured** and IT Corporation
4. Mortgage, Security Agreement and Fixture Filing dated _____
5. Easement Agreement dated _____
6. FOSET dated _____
7. Conveyance Agreements to Public Benefit Transferees dated _____
8. Consent Order dated _____ by and between Oz Entertainment Company and the Kansas Department of Health and Environment
9. Agreement between the United States Department of the Army and the Oz Entertainment Company (Army-OEC Agreement) for Corrective Action as to Portions of the Former Sunflower Army Ammunition Plant dated _____
10. Memorandum of Agreement dated _____ between the U.S. Environmental Protection Agency and the Kansas Department of Health and Environment
11. Memorandum of Agreement dated _____ by and between the General Services Administration and the Kansas Statewide Projects Development Corporation (GSA-KSPDC Agreement) for Conveyance of Land and Property Comprising the former Sunflower Army Ammunition Plant
12. Any other contract related to the development, construction, purchase, transfer, financing, investigation, remediation, maintenance and operation, lease or sale of all or any part of the **Insured Property**.
13. The Irrevocable Trust Agreement, dated _____.
14. The Agreement dated _____ by and between KDFA and Oz Entertainment Company.

All other terms, conditions and exclusions remain the same.

ENDORSEMENT NO. 5

NAMED INSURED

Declarations Item 1: NAMED INSURED:

THE OZ ENTERTAINMENT COMPANY (OEC)

And:

- a.) All organizations, firms or agencies of which OEC has assumed or exercised management control, now existing or which may have existed, or which may hereafter exist or be acquired or constituted;
- b.) All past, present or future employees, partners, directors, officers, stockholders, consultants, and volunteers as respects operations with any OEC activity;
- c.) OEC's interests in any joint ventures, associations, partnerships or volunteer activities as now existing or which may have existed, or which may hereafter exist or be acquired or constituted;
- d.) The Irrevocable Trust created by the Irrevocable Trust Agreement between Oz Entertainment Company and _____, dated _____, but only upon the occurrence of a "Triggering Event" as defined in the aforesaid Trust Agreement (or a "Trigger Event" as defined in the **Consent Order**).

All other terms, conditions and exclusions remain the same.

ENDORSEMENT NO. 6

UNDERGROUND STORAGE TANK ("UST") EXCLUSION LIMITED UST COVERAGE FOR UNKNOWN USTS

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

It is hereby agreed that the following is added to Section IV. EXCLUSIONS, Paragraph 1, COMMON EXCLUSIONS - APPLICABLE TO ALL COVERAGES:

Arising from **Pollution Conditions** resulting from any **underground storage tank** unless satisfactory integrity test results (Company approved method) are received and approved by and are on file with the underwriter. Coverage is available only for those **underground storage tanks** specifically approved in writing by the underwriter and scheduled in the Policy by endorsement. However, this exclusion does not apply to **underground storage tanks** which were unknown to all **Insureds** prior to the discovery of the **Pollution Conditions**.

This exclusion does not apply to **underground storage tanks** or tank sites that are the subject of Work Plans under the **Consent Order** and are therefore included in the **Consent Order**.

It is agreed that the Company has access to information in the possession of the United States Army related to **underground storage tanks** of which the Army is aware. All other **underground storage tanks** will be deemed to be unknown to the Army.

An **underground storage tank** is any tank, including associated underground piping connected to the tank, that has at least ten percent (10%) of its volume below ground.

All other terms, conditions and exclusions remain the same.

ENDORSEMENT NO. 7

REINSTATEMENT ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Upon payment of the Reinstatement Premium stated below, the **Named Insured** shall be entitled to reinstatement of the Limits of Coverage as follows:

If during the **Policy Period**, one or more Coverage Section Aggregate Limits stated in Item 3 of the Declarations is or may be impaired by reason of **Clean-up Costs** or **Loss** resulting from **Pollution Conditions**, the **Named Insured** shall be entitled to one reinstatement of all or part of a corresponding amount of the Policy Aggregate limit stated in Item 4 of the Declarations. Such reinstated limits, however, shall be available only for **Clean-Up Costs** or **Loss** resulting from **Pollution Conditions** different from those which caused the actual or potential impairment of Coverage Section Aggregate Limits preceding the reinstatement.

In no event shall the liability of the Company under this Policy exceed twice the Policy Aggregate Limit stated in Item 4 of the Declarations (Total of \$100,000,000).

Reinstatement Premium: \$To be determined

All other terms, conditions and exclusions remain the same.

ENDORSEMENT NO. 9

"SOFT COSTS" ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

It is hereby agreed that the following is added to Section I. INSURING AGREEMENTS, I. COVERAGES, Coverage J, BUSINESS INTERRUPTION COVERAGE - ACTUAL LOSS OR LOSS OF RENTAL VALUE.

If **Pollution Conditions** on or under the **Insured Property** cause a delay in the **Completion Date** of a **Covered Project** on the **Insured Property**, the Company agrees to pay the following expenses the **Insured** incurs for that delay only, in excess of the Deductible during the **Period of Restoration**, provided such expenses would not have been incurred in the absence of such **Pollution Conditions**:

1. Additional interest expense on money the **Insured** has borrowed to finance construction or development of the **Covered Project**;
2. Additional real estate taxes and other assessments on the **Insured Property**;
3. Additional advertising or promotional expenses to lease or sell the **Insured Property**;
4. Additional expenses resulting from the re-negotiation of leases of the **Insured Property**;
5. Additional fees and expenses for architects, engineer and consultants.

As used in this Endorsement:

Completion Date means the date specified for completion of construction or development of the **Covered Project** in the contract for construction or development.

Covered Project means the construction or development of the Oz Entertainment Company Theme Amusement Park.

All other terms, conditions and exclusions remain the same.

ENDORSEMENT NO. 10

SCHEDULE OF ENGINEERING REPORTS

It is agreed that the Company has been provided access to all records, files, drawings, data and tests related to the purchase, transfer, financing, investigation, environmental characterization, remediation, maintenance and operation, leasing or sale of the **Insured Property** in the possession of the **Insureds**, that the Company has accepted these records, files, drawings, data and tests as "circumstances material to granting of coverage under this Policy" and "Representations" of the **Named Insured** as set forth in Section VII, Conditions, Paragraphs G and L and as and "Prior Knowledge" of the **Named Insured** under Section IV, Exclusions, Paragraph K, and that the Company will not assert failure to disclose material information, if such information is contained in such records, files, drawings, data and tests, or has otherwise been disclosed by the **Named Insured** as a basis for denial of coverage to any **Insured** under Section IV, Exclusions, Paragraph K of this Policy.

All other terms, conditions and exclusions remain the same.

ENDORSEMENT NO. 11

SCHEDULE OF APPROVED REMEDIATION CONTRACTORS

The Company hereby agrees that it has reviewed the qualifications and approved the following contractors to perform **Clean-Up** of the **Insured Property** under the terms of the **Consent Order** should it be necessary to replace IT Corporation at any time during the **Policy Period** as the remediation contractor under this Policy.

APPROVED CONTRACTORS

All other terms, conditions and exclusions remain the same.

ENDORSEMENT NO. 12

IRREVOCABLE TRUST ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

It is hereby agreed that with respect to this Policy, upon the occurrence of a "Triggering Event" as defined in the Irrevocable Trust Agreement, dated _____, between Oz Entertainment Company and _____ (or a "Trigger Event" as defined in the **Consent Order**), the Irrevocable Trust will become the **Named Insured** of this Policy and Oz Entertainment Company will become an Additional **Insured** on this Policy.

Furthermore, Section VII, Paragraph G, and the first sentence of Section VII, Paragraph L, shall not apply to the Irrevocable Trust.

Also, the Deductible for Coverages A through I (if applicable) will be Zero (0) with respect to the Irrevocable Trust and the last subparagraph of Section IV, Paragraph G.(1) shall not apply.

All other terms, conditions and exclusions remain the same.